

Date: February 29, 1996

BQC-96-010

To: Hospitals

HOSP - 5

From: Judy Fryback, Director  
Bureau of Quality Compliance

**Anti-Dumping Questions and Response from Health Care Financing Administration.**

Attached is a copy of a letter that we received in our office on February 12, 1996. This letter is from the Health Care Financing Administration (HCFA), Chicago Regional Office. It is a response to a question posed by the Medical Society of Milwaukee County, on anti-dumping issues. The response from HCFA shows that memorandums of understanding (MOU) must conform with Medicare anti-dumping requirements. However, if an MOU is in contradiction with the anti-dumping requirements, HCFA asks that you bring this to their attention.

Please share this information with your staff as is appropriate. If, you have any additional questions or concerns please contact Stephen D. Schlough, P.E., Chief, Hospital and Health Services Section at (608) 266-3878.

Attachment

JF/sds/jjf

DEPARTMENT OF HEALTH & HUMAN SERVICES

Region V

Health Care Financing Administration

105 West Adams Street

15<sup>th</sup> Floor

Chicago, Illinois 60603-6201

Refer to: CO7

Frank Bialek

Director of Communications and Community Service

The Medical Society of Milwaukee County

1126 South 70<sup>th</sup> Street, Suite S507

Milwaukee, Wisconsin 53214-3104

Dear Mr. Bialek:

This is in response to your letter of January 9, 1996 regarding the emergency care requirements ("anti-dumping") for Medicare hospitals in Section 1867 of the Social Security Act. You ask whether a Medicaid waiver concerning the "Wisconsin HMO Initiative and Preferred Provider Program" allows anyone to ignore the Medicare anti-dumping provisions. The answer is no; every Medicare hospital and its personnel are subject to the Medicare anti-dumping requirements.

Your letter says the Wisconsin Medicaid HMO Initiative and Preferred Provider Program allows "HMOs to require personnel in hospital emergency departments to seek HMO authorization for medical evaluation and treatment prior to determination of whether or not any emergency medical condition exists," and asks if this violates the law. Yes, it does.

You provided me with a copy of this office's response to a previous inquiry from you, an August 1, 1990 letter from my colleague, Jerry Sandlin. You believe it indicates that the operation of the HMO initiative does not violate the law. However, Mr. Sandlin's letter did not simply say that hospitals operating under the HMO Initiative will not be in violation of the law. It said hospitals will not violate the law if they first, before checking with the HMO, determine whether or not an emergency medical condition exists; then if it does not, the law does not apply. If an emergency condition exists, Mr. Sandlin wrote, then the law must be followed, HMO or no HMO. (Mr. Sandlin's letter remains an excellent brief survey of the requirements of the law regarding the anti-dumping requirements.)

Our understanding is that the Wisconsin Medicaid rules governing the memorandums of understanding (MOU) between HMOs and hospitals are in conformance with Medicare anti-dumping requirements. If you are aware of a particular MOU that you believe does not conform to the anti-dumping requirements, please let me know.

I will be more than happy to discuss this issue with you further, if you wish. Please call me at (312) 886-5217 if any questions remain.

Sincerely,

/s/ Mark Dykstra

Program Representative

Division of Health Standards and Quality